

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**MICHAEL L. MCDONALD**

## Claimant

VS.

## FIBERGLASS SYSTEMS

Respondent

AND

# PACIFIC EMPLOYERS INSURANCE COMPANY

Insurance Carrier

Docket No. 1,003,977

## ORDER

Respondent and its insurance carrier appealed the June 30, 2005, Post Award Medical Order entered by Administrative Law Judge Nelsonna Potts Barnes.

## APPEARANCES

Kim R. Martens of Wichita, Kansas, appeared for claimant. Vincent A. Burnett of Wichita, Kansas, appeared for respondent and its insurance carrier (respondent).

## RECORD

The record considered by the Board is listed in the June 30, 2005, Order.

## ISSUES

This is a request for post-award medical treatment. In short, on October 11, 2001, claimant sustained a work-related injury. The parties settled the claim on September 12, 2003, with claimant reserving his right to seek additional medical treatment.

On July 27, 2004, claimant underwent a lumbar spine epidural injection, which was part of the medical treatment being provided by respondent. Before the injection procedure, claimant's pulse rate dropped. Immediately following the injection, claimant's wife took claimant to see a cardiologist, who had claimant undergo a heart catheterization. In the June 30, 2005, Order, Judge Barnes ordered respondent to pay Galichia Medical Group and the Galichia Heart Hospital the total sum of \$9,103.30. Additionally, the Judge

ordered respondent to pay claimant's attorney post-award fees in the total sum of \$4,547.50.

Respondent contends Judge Barnes erred. Respondent argues the evidence fails to establish that the heart catheterization was related either to claimant's October 11, 2001, accident, the resulting injuries from that accident, or to the medical treatment administered for those resulting injuries. In addition, respondent also argues the catheterization procedure was neither reasonable nor necessary as the low pulse rate claimant experienced before the epidural procedure had resolved before he saw Dr. Joseph Galichia at the Galichia Medical Group. Accordingly, respondent requests the Board to reverse the June 30, 2005, Order.

Conversely, claimant argues the treatment from Dr. Galichia and the Galichia Heart Hospital was necessitated either by the epidural injection or from anticipating the injection. In summary, claimant argues he experienced a vagal reaction that was a natural result of the epidural procedure and, therefore, it was reasonable and necessary to obtain a heart catheterization to rule out a heart attack. Claimant also argues he and his wife immediately sought medical treatment for his heart as his wife understood it was urgent that claimant see a cardiologist. Accordingly, claimant requests the Board to affirm the June 30, 2005, Post Award Medical Order.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the parties' arguments, the Board finds and concludes the Post Award Medical Order should be modified.

As indicated above, this claim is now before the Board to address claimant's request for the payment of medical expense incurred on July 27, 2004, with Dr. Joseph Galichia and the Galichia Heart Hospital.

On July 27, 2004, while waiting to be sedated and to undergo an epidural injection in his lumbar spine, claimant experienced a drop in his pulse rate. The anesthesiologist who eventually performed the epidural injection, Dr. David Dugan, was advised of the lowered pulse rate and went to the room where claimant was waiting. While speaking with claimant, claimant's pulse again slowed. Shortly afterwards, the doctor gave claimant a medication that sped his heart rate. After being monitored for approximately ten minutes, claimant stated he wanted to proceed with the epidural. Consequently, claimant was then sedated and given the cortisone injection in his low back.

After the epidural, claimant was taken to the recovery room where he was monitored. During claimant's recovery, Dr. Dugan ordered an electrocardiogram for monitoring claimant's heart rhythm. That test indicated claimant might have some problem

with his heart that could cause arrhythmia. Accordingly, when Dr. Dugan released claimant that day, the doctor recommended that claimant follow up with his family doctor or cardiologist. The doctor testified, in part:

Q. (Mr. Burnett) I understand that. And based on that EKG then, what did you -- did you tell the patient anything? Or when you got those results, what did you do?

A. (Dr. Dugan) Yes. Again after verifying that he was stable, he was -- had no chest pain, to me he was not short of breath, he was not dizzy, his vitals remained -- vital signs were stable, I told him that I recommended that he be followed by a -- by his family doctor or a cardiologist. I offered to do that, and I believe he said that he would call his doctor.

Q. Okay. Did you, in this conversation that you had with Mr. McDonald, did you tell him that he needed to immediately go to a cardiologist for a consult?

A. No. I said, you know, just follow up with your regular doctor or your cardiologist. I didn't -- I didn't feel any urgency for it at the time. Certainly if he had had any symptoms, you know, it would have been a different story; but at the time of discharge, there was nothing that alarmed me.<sup>1</sup>

Contrary to Dr. Dugan, claimant's wife felt the situation was urgent and promptly took claimant to see Dr. Galichia, who examined claimant and referred him to the nearby Galichia Heart Hospital for a catheterization procedure.

Dr. Galichia's memory of claimant's symptoms on July 27, 2004, was in sharp contrast to Dr. Dugan's. According to Dr. Galichia, claimant weighs 313 pounds and had a history of ongoing chest pain, shortness of breath, and fatigue when the doctor met with claimant shortly after his release by Dr. Dugan. Those symptoms, of course, are associated with heart disease and also associated with being overweight.

There is no question, however, that claimant did not have any signs of a vagal reaction when he saw Dr. Galichia as claimant then had a normal heart rate and normal blood pressure.

Dr. Galichia ordered a heart catheterization, which yielded normal results. Dr. Galichia released claimant from care and told him the low pulse rate was probably a reaction to the epidural. Dr. Galichia and the Galichia Heart Hospital charged claimant \$1,525 and \$7,578.30, respectively.

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<sup>1</sup> Dugan Depo. at 27-28.

The Board finds and concludes the evidence fails to establish it is more probably true than not true that the heart catheterization was related to claimant's work-related back injury or the epidural injection he was given. On the other hand, the evidence reveals the claimant was advised to see, at his leisure, either his family physician or a cardiologist as the situation was not urgent.

Under these particular facts, the Board finds Dr. Galichia's services and the resulting heart catheterization were not related to claimant's October 11, 2001, back injury or the resulting medical treatment. Consequently, the services rendered by Dr. Galichia and the Galichia Heart Hospital were not reasonable and necessary to cure and relieve the effects of claimant's back injury. Accordingly, the Board concludes respondent and its insurance carrier should not be held responsible for the expenses claimant incurred on July 27, 2004, with Galichia Heart Hospital and the Galichia Medical Group.

The Board is mindful that Dr. Galichia attributed claimant's low pulse rate both to the pain caused by the epidural injection and anxiety arising from the procedure.<sup>2</sup> But claimant's vagal reaction occurred before he was sedated and before he received the injection. Furthermore, Dr. Galichia did not know that claimant had previously received several epidural injections. In short, it appears Dr. Galichia performed the heart catheterization to assess the extent of any heart disease, which has not been linked to claimant's work-related injuries.

The Judge ordered respondent to pay claimant \$4,547.50 in attorney fees. Respondent raised the issue of attorney fees in its application for Board review. But respondent in its brief to this Board neither listed nor addressed claimant's attorney fees as an issue to be addressed by the Board. Accordingly, the Board will not disturb the Judge's finding regarding those fees.

**WHEREFORE**, the Board modifies the June 30, 2005, Post Award Medical Order and sets aside the order requiring respondent and its insurance carrier to pay Galichia Heart Hospital and Galichia Medical Group. The Board affirms the Judge's order that respondent and its insurance carrier are required to pay claimant's attorney the sum of \$4,547.50. Finally, the Board orders respondent and its insurance carrier to pay the costs of the depositions taken for purposes of this request for post-award medical treatment.

**IT IS SO ORDERED.**

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<sup>2</sup> Galichia Depo. at 20.

Dated this \_\_\_\_ day of September, 2005.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Kim R. Martens, Attorney for Claimant  
Vincent A. Burnett, Attorney for Respondent and its Insurance Carrier  
Nelsonna Potts Barnes, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director